

## Public Consultation

**Subject:** International passenger transport services involving domestic services  
**Beginning:** 12 October 2012  
**Ending:** 14 December 2012

### I. Purpose and conditions of the public consultation

The purpose of this document is to present, in a transparent manner, the procedures and criteria that the Authority intends to put in place according to the obligations placed upon it by articles L. 2121-12 and L. 2133-1 of the (French) Transport Code regarding international passenger transport services.

The public consultation focuses particularly on the tests that the Authority may carry out in order to verify:

- whether the principal purpose of a service offered by a railway undertaking is indeed international;
- whether the domestic services offered as part of an international service compromise the economic equilibrium of a public service contract.

It deals with the procedures that railway players wishing to refer a case to the Authority need to follow and the criteria and the methodology that the Authority intends to use.

Interested persons may make any comments they wish on the subject of this issue. To gather more specific and more directly operational opinions, the Authority has chosen to organise the points that it feels require elucidation partly in the form of questions and partly as a framework, which will assume the construction of a possible future decision by the Authority.

This framework should therefore not be considered as a draft decision, but rather as a guide to reflection. It in no way prejudices the final decisions of the Authority.

Comments on this document, as well as all contributions that appear appropriate in enlightening the Authority, must be submitted to ARAF **before 14 December 2012**, either:

- by e-mail (preferably): [consultation.publique@regulation-ferroviaire.fr](mailto:consultation.publique@regulation-ferroviaire.fr)
- by post to the office: ARAF – Autorité de régulation des activités ferroviaires  
57 Bd Demorieux  
CS 81915  
72019 Le Mans Cedex 2

To stimulate further reflection among the interested parties, the Authority will organise a workshop to exchange information between the players before the end of the consultation period. This meeting will take place on 20 November 2012. If you wish to attend, please inform us via e-mail before 25 October 2012 (as well as the number of participants) at the following address: [consultation.publique@regulation-ferroviaire.fr](mailto:consultation.publique@regulation-ferroviaire.fr).

The Authority, in the spirit of transparency, will publish all the comments submitted, with the exception of confidential business information. To this end, contributors are requested to clearly indicate the aspects they consider to be confidential business information. Again in the spirit of transparency, contributors are requested to keep the number of passages considered to be confidential business information to a minimum.

## **II. Regulatory references**

The regulatory framework applicable to international passenger transport services is governed by the following texts:

- Directive 2007/58/EC and its interpretative communication 2010/C 353/01;
- Articles L. 2121-12 and L. 2133-1 of the Transport Code;
- Decree No. 2010-932 of 24 August 2010 on rail passenger transport.

A comparative reading of Directive 2007/58/EC and national regulatory texts raises questions regarding the scope of the Authority's opinion, insofar as these texts do not use the same terms or phrases. For example, although Directive 2007/58/EC and its interpretative communication specifies the responsibility of the inspection body using the term "decision", the national regulations refer to the production of more or less restrictive opinions produced by the Authority. The regulations also state that, provided that the Authority believes that the principal purpose condition has not been met and in view of its opinion, the minister for transport may impose limitations on domestic services, whereas the directive does not consider such limitations.

**Question 1: How do you understand the regulatory framework? Does the draft presented below appear to respect the spirit of Directive 2007/58/EC and/or national texts (Transport Code and Decree No. 2010-932)?**

### III. Framework

#### Section 1 - General

Article 1 The following definitions are for the purposes of this document:

- a) “Public service contract”: a contract as defined in Article 2 i) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 regarding passenger public transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;
- b) “Organising authorities”: region, Ile-de-France transport association, and “départements” and public entities which have concluded a public service contract for the operation of a passenger rail transport service;
- c) “International passenger rail transport service”: a passenger rail transport service where the train crosses at least one border between France and another Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;
- d) “Domestic service”: a service run by a passenger rail company with a route running between two stations located on national territory;
- e) “Applying railway undertaking”: a railway undertaking wishing to operate an international passenger service involving domestic services.

#### Section 2 - Notification procedure

##### ***Pre-notification***

Article 2 Applying railway undertakings have the option to pre-notify the Authority of their wish to operate an international passenger service involving domestic services.

Article 3 The pre-notification mentioned in Article 2 au-dessus is optional and of an informal nature. It aims to alert the Authority to the railway undertaking's intentions even before the information package is submitted.

##### ***Assembling the information package***

Article 4 Every applying railway undertaking assembles an information package to be sent to the Authority. The package must contain the following information:

- a) The originating station and the final destination of the international passenger rail transport service;
- b) The domestic services intended;
- c) The schedules planned and the applicable rates;
- d) The number of passengers expected and the forecast turnover. Forecasts will be for a period of five years, broken down by origin-destination;
- e) The lengths of the longest domestic service and the longest international service.

- Article 5 The applying railway undertaking candidate indicates in the information package the information it considers to be of a commercially confidential nature.

### ***Submitting the information package***

- Article 6 The information package is to be submitted at the latest five months before the date when the service is scheduled to start, in accordance with Article 2 of Decree No. 2010-932. However, the Authority encourages railway undertakings to anticipate this deadline and to submit the package with the corresponding train path request.
- Article 7 On receipt of the information package, the Authority shall verify the completeness of the package within eight days. If the package is complete, the Authority shall confirm receipt of the package; otherwise it shall inform the applying railway undertaking of the missing aspects.
- Article 8 After receiving the information, the Authority shall inform about the project of international service on its website: [www.regulation-ferroviaire.fr](http://www.regulation-ferroviaire.fr). In order to protect the confidential commercial data of the railway undertaking concerned, the information published on the website shall be the stations served by the service and the domestic services intended.

Interested railway undertakings are invited to regularly consult the Authority's website.

- Article 9 The information published on the Authority's website shall be communicated to the other regulators concerned.

## Section 3 - Principal purpose test

*Section 3 aims to describe the procedures followed by the Authority to verify the international nature of the service.*

**Question 2: Do you think the procedures are clear, complete and compatible with your operations?**

### ***Introduction***

- Article 10 The principal purpose test aims to ensure that the introduction of new international services involving domestic services shall not *"be used to bring about the opening of the market for domestic passenger services, but"* shall instead *"merely be focused on stops that are ancillary to the international route"*. However, these services must make it possible to *"ensure that such operations have a realistic chance of being economically viable and to avoid placing potential competitors at a disadvantage to existing operators"*.<sup>1</sup>
- Article 11 This section aims to present the procedure and criteria used by the Authority to carry out the principal purpose test. In accordance with the recommendations of the European Commission's interpretative communication regarding some

---

<sup>1</sup> See recitals 7 and 8 of Directive 2007/58/EC.

provisions of Directive 2007/58/EC, the Authority conducts an analysis which is both quantitative and qualitative.

***Referral procedure of the Authority regarding the principal purpose test***

Article 12 As a reminder, Decree No. 2010-932 specifies that the minister for transport shall be given a period of two months starting from the date of receipt of the package referred to in Article 2 of the above decree to refer a case to the Authority regarding the principal purpose test.

Article 13 The request for the Authority to verify the principal purpose of the service shall be lodged by the applying railway undertaking once the information package has been submitted.

**Question 3: Is it desirable to fix a deadline by which the applying railway undertaking must refer a case to the Authority?**

*Article 14 aims to specify the referral deadlines set by the Authority so as to allow the principal purpose of the service to be verified within a time-scale compatible with the operational restrictions for the applying railway undertaking.*

Article 14 Every interested railway undertaking, excluding the applying railway undertaking, shall be given a period of one month starting from the publication date laid down in Article 8 to refer a case to the Authority regarding the principal purpose of the service intended.

**Question 4: Is a fixed time-scale like that described above desirable? Do you think the one-month deadline is sufficient?**

Article 15 Those referring a case shall be requested to use the form provided in Appendix I of this document. Three original copies of the form should be sent to the Authority's headquarters as a registered letter with acknowledgement of receipt.

Article 16 The minister for transport and interested railway undertakings shall specify in their referrals the aspects that shed doubt on the international purpose of the service.  
In addition, interested railway undertakings shall specify in their referrals the aspects that prompt them to think that the new service could have an impact on their operation.

Article 17 The Authority shall inform the applying railway undertaking and the minister for transport of every case referred. The Authority shall publish the subject of the case referred on the website: [www.regulation-ferroviaire.fr](http://www.regulation-ferroviaire.fr).

Article 18 As part of this referral, the Authority shall communicate with the other European regulators concerned, while ensuring commercial confidentiality is respected.

Article 19 The Authority shall return its decision, on the basis of the information gathered, within two months of the date of receipt of the referral.

Article 20 The person referring the case and the applying railway undertaking shall be informed of the Authority's decision. It shall also be forwarded to the minister for transport and the infrastructure manager. It shall be made publicly available, subject to legally protected confidential aspects.

### ***Methodology and criteria used***

- Article 21 The Authority shall analyse the function of the service in the medium term. It shall be based on five-year forecasts. All data provided must comply with this time frame.
- Article 22 After receiving the referral, the Authority shall request the following information from the applying railway undertaking in order to complete the information package:
- a) Competitive situation of the service proposed (origin-destination already offered by another operator or not);
  - b) Intended modal shift intended (if relevant);
  - c) Type of service (type of interior fittings, marketing, etc.);
  - d) Populations of the towns or areas served.
- Article 23 At the request of the Authority, the applying railway undertaking shall provide the following information within eight days:
- a) Models of the traffic forecasts and the forecast turnover, together with all the assumptions used (elasticities, projection assumptions, etc.);
  - b) Description of every qualitative aspect suggesting that the service is primarily an international service.
- Article 24 The Authority shall carry out a critical analysis of the data provided, focusing particularly on the traffic forecasts and the forecast turnover. It shall reserve the right to use different values for the principal purpose test than those provided by the applying railway undertaking, taking into account any corrections that it considers necessary.

*Articles 25 and 26 aim to suggest criteria that could be used by the Authority for the principal purpose test. They provide for a two-tier system:*

- firstly based on thresholds that specify the conditions sufficient (but not mandatory) to ensure the international nature of the service (Article 25);*
- if these criteria are not met, then the Authority shall carry out an in-depth analysis, which is both quantitative and qualitative (Article 26).*

- Article 25 If, using the data resulting from Articles 23 and 24, the project simultaneously satisfies the following three threshold conditions:
- a) proportion of international passengers is greater than 60% of the total number of passengers,
  - b) more than 30% of the length of the longest service is operated outside French territory,
  - c) proportion of the turnover resulting from international passengers is greater than 60% of the total turnover,
- the international nature of the service is considered verified.
- Article 26 Should this not be the case, the Authority conducts a multi-criteria analysis in order to reach a decision. The Authority's principal purpose test is based on the following criteria:
- a) Intended schedule (stops, timetables and days on which trains will run);
  - b) Proportion of international turnover;
  - c) Proportion of international passengers (in passengers and in passengers-km);
  - d) Competitive situation of the service proposed (origin-destination already offered by another operator or not);

- e) Intended modal shift intended (if relevant);
- f) Type of service (type of interior fittings, marketing, etc.);
- g) Length of the domestic services and the international services;
- h) Populations of the towns or areas served.

**Question 5: Do you think the approach chosen in Articles 25 and 26 is appropriate? Are the threshold conditions suggested in Article 25 sufficient? Do you think the criteria set out in Article 26 are appropriate? What other, if any, criteria should be taken into consideration? Should the criteria be organised in order of priority?**

Article 27 The Authority shall specify the period of validity of its decision, as well as the data that the applying railway undertaking is required to provide for monitoring purposes.

**Question 6: What do you think is an appropriate period of validity of the Authority's decision and what monitoring measures would you suggest?**

#### Section 4 - Testing the economic equilibrium of public service contracts

*Section 3 aims to describe the procedures followed by the Authority to evaluate whether the economic equilibrium of a public service contract is compromised.*

**Question 7: Do you think the procedures are clear, complete and compatible with your operations?**

#### **Introduction**

Article 28 The test shall aim to determine whether or not the introduction of new international services involving domestic services compromises the economic equilibrium of a public service contract.

Article 29 This section aims to present the procedure and criteria used by the Authority to carry out the economic equilibrium test.

#### **Referral procedure of the Authority regarding the test of the economic equilibrium of a public service contract**

Article 30 As a reminder, Decree No. 2010-932 states that when the applying railway undertaking confirms to the transport organising authority (Autorité Organisatrice des Transports – AOT) its decision to offer domestic services falling under its competence, the AOT shall immediately notify the holder of the public service contract and forward a certificate to the applying railway undertaking. The applying railway undertaking then forwards this certificate to the Authority and the infrastructure manager.

If they believe that an international passenger rail transport service involving domestic services may compromise the economic equilibrium of a public service contract, the AOT and the holder of the public service contract shall be given one month starting from the date on which the link is confirmed to refer a case to the Authority. The infrastructure manager shall be given one month starting from the date of receipt of the certificate referred to in the first paragraph of this article to refer a case to the Authority.

Article 31 Those referring a case, cited to in Article 30, shall be requested to use the form provided in Appendix II of this document. Three original copies of the form should be sent to the Authority's headquarters as a registered letter with acknowledgement of receipt.

Article 32 Those referring a case shall specify in their referrals the aspects that prompt them to think that the new service could compromise the economic equilibrium of a public service contract.

Article 33 The person who referred the case shall notify the parties referred to in Article 30 of this fact. The Authority shall publish the subject of the case referred on [www.regulation-ferroviaire.fr](http://www.regulation-ferroviaire.fr).

Article 34 The Authority shall communicate with the other inspection bodies concerned under this referral, while ensuring commercial confidentiality is respected.

Article 35 The Authority shall return its decision, after consultation with all the parties concerned, within two months of the date of receipt of all the relevant information.

Article 36 The Authority may propose restrictions regarding the domestic services.

**Question 8: If the analysis of the Authority concludes that the economic equilibrium of a public service contract will be compromised, do you think it is desirable for the Authority to recommend restrictions in its decision? If yes, what types of restrictions can be put in place? (Restricting the number of marketable tickets on domestic routes, a ban on some stops, etc.).**

Article 37 The person referring the case and the applying railway undertaking shall be informed of the Authority's decision. It shall also be forwarded to the minister for transport and the infrastructure manager. It shall be made publicly available, subject to legally protected confidential aspects.

#### ***Data used***

Article 38 The Authority shall verify the equilibrium of the public service contract in the medium term. It shall be based on forecasts for a period of five years or up until the end of the contract in question. All data provided must comply with this time frame.

**Question 9: What time frame should be used for verifying that the public service contract is not compromised, particularly in terms of the expiration of the contract?**

Article 39 In order to carry out the test of the economic equilibrium of a public service contract, the Authority shall use the following details, provided by the AOT or by the holder of the public service contract (non-exhaustive list):

- a) Public service contract in question;
- b) Schedules of contract services (stops, timetables and days on which trains run);
- c) Past data for traffic per line and for the whole of the public service contract in question (annually, going back at least five years);
- d) Past data for turnover per line and for the whole of the public service contract in question (annually, going back at least five years);



- e) Charges;
- f) Traffic forecasts and the forecast turnover per line and for the whole of the public service contract;
- g) Cost data per line and for the whole of the public service contract in question.

Article 40 The Authority shall specifically base its analysis on the following data, provided by the applying railway undertaking:

- a) Intended schedule (stops, timetables and days on which trains will run);
- b) Estimated number of passengers on the link(s) in competition with the public service contract, segmented by fare category;
- c) Charges intended for this/these link(s);
- d) Models of the traffic forecasts and the forecast turnover, together with all the assumptions used (elasticities, projection assumptions, rules for the distribution of passengers between the two operators, etc.).

### ***Methodology***

Article 41 The AOT and the holder of the public service contract shall send the information listed in Article 39 to the Authority when the case is referred.

Article 42 At the request of the Authority, the applying railway undertaking shall immediately send the information listed in Article 40.

Article 43 Firstly, the Authority shall carry out a critical analysis of the data provided, focusing particularly on the traffic forecasts and forecast turnover. It shall reserve the right to use different values to carry out the analysis than those provided, taking into account any corrections that it considers appropriate.

Article 44 Secondly, the Authority shall perform an economic analysis, based on the data collected and according to the following criteria:

- a) Provisions laid down by the public service contract relating to its economic equilibrium;
- b) Possible losses in revenues and costs, in the short and medium term;
- c) Possible profits, in the short and medium term;
- d) Evolution of the profitability of the services operated by the holder of the public service contract.

The Authority shall determine if, according to its analysis, the economic equilibrium of the public service contract is compromised.

**Question 10: Do you think that the suggested criteria are relevant? What other aspects should be taken into account?**

Article 45 The decision of the Authority shall specify the time period during which the AOT, the holder of the public service contract and the infrastructure manager may not make another referral to the Authority for the domestic service in question, unless the facts or the legal circumstances on which the Authority's decision is based have significantly changed.

Article 46 The Authority shall specify the data that the applying railway undertaking is required to provide for the purpose of monitoring its decision.

**Question 11: What do you think is an appropriate period of validity of the Authority's decision and what monitoring measures would you suggest?**

Appendix I: Form to be sent to ARAF for referring cases relating to the principal purpose of an international passenger service involving domestic services

*Three original copies of the form should be sent to the Authority's headquarters as a registered letter with acknowledgement of receipt.*

**Contact form**

Company (name, address and articles of association):

Contact responsible for the referral:

Address:

Telephone number:

E-mail address:

**Case referred by the applying railway undertaking**

The applying railway undertaking shall provide the information set out in Article 4 as part of the information package and any other information that enables the Authority to carry out its analysis:

Intended start date for the new service	
Originating station of the international passenger rail transport service	
Final destination of the international passenger rail transport service	
Intended domestic services	
Schedules planned and the applicable rates	
Number of passengers expected (forecasts for a period of five years, broken down by origin-destination)	
Forecast turnover (forecasts for a period of five years, broken down by origin-destination)	
Length of the domestic services, particularly the longest	
Length of the international services, particularly the longest	
Competitive situation of the service proposed	

Intended modal shift intended (if relevant)	
Type of service (type of interior fittings, marketing, etc.) <i>You may provide additional information to support your argument.</i>	
Populations of the towns or areas served in other countries	

This information shall also be given to the Authority in an editable electronic format.

The applying railway undertaking candidate indicates the information it considers to be of a commercially confidential nature.

In order to complete its analysis, the Authority may request, if necessary, the additional information referred to in Article 23.

**Case referred by the minister for transport or an interested railway undertaking**

New international passenger transport service involving domestic services forming the subject of this referral	
Aspects that prompt the person referring the case to doubt the principal purpose of the service	

And, in the case of an interested railway undertaking,

Aspects that prompt them to think that the new service could have an impact on their operation.	
---	--

The interested railway undertaking indicates the information it considers to be of a commercially confidential nature.

In order to complete its analysis, the Authority may request, if necessary, additional information.

Appendix II: Form to be sent to ARAF for referring cases relating to the economic equilibrium  
of a public service contract

*Three original copies of the form should be sent to the Authority's headquarters as a registered letter with acknowledgement of receipt.*

**Contact form**

Company (name, address and articles of association):

Contact responsible for the referral:

Address:

Telephone number:

E-mail address:

**Case referred by the applying railway undertaking**

The applying railway undertaking shall send the following information to the Authority:

Intended schedule (stops, timetables and days on which trains will run)	
Estimated number of passengers on the link(s) in competition with the public service contract, segmented by fare category	
Charges intended for this/these link(s)	
Model of the traffic forecasts, together with all the assumptions used (elasticities, projection assumptions, rules for the distribution of passengers between the two operators, etc.)	
Model of the forecast turnover, together with all the assumptions used (projection assumptions, etc.)	

This information shall also be given to the Authority in an editable electronic format.

The applying railway undertaking candidate indicates the information it considers to be of a commercially confidential nature.

In order to complete its analysis, the Authority may request, if necessary, additional information.

**Case referred by the transport organising authority or the holder of a public service contract**

Aspects that prompt the person referring the case to think that the new service could compromise the economic equilibrium of the public service contract	
--	--

The person referring the case shall send the Authority information that enables the Authority to evaluate the criteria set out in Article 44. Specifically, the following information must be provided:

Public service contract in question	
Schedules of contract services (stops, timetables and days on which trains run)	
Past data for traffic per line of the public service contract in question (annually, going back at least five years)	
Past data for traffic for the whole of the public service contract in question (annually, going back at least five years)	
Past data for turnover per line of the public service contract in question (annually, going back at least five years)	
Past data for turnover for the whole of the public service contract in question (annually, going back at least five years)	
Charges	
Traffic forecasts per line of the public service contract; forecasts for a period of five years or up until the end of the contract in question	
Traffic forecasts for the whole of the public service contract; forecasts for a period of five years or up until the end of the contract in question	
Forecast turnover per line of the public service contract; forecasts for a period of five years or up until the end of the contract in question	
Forecast turnover for the whole of the public service contract; forecasts for a period of five years or up until the end of the contract in question	

Cost data per line of the public service contract in question	
Cost data for the whole of the public service contract in question	

This information shall also be given to the Authority in an editable electronic format.

The person referring the case indicates the information it considers to be of a commercially confidential nature and also indicates the information relevant to a contractual partner.

In order to complete its analysis, the Authority may request, if necessary, additional information.

### **Case referred by the infrastructure manager**

Aspects prompting the infrastructure manager to think that the new service could compromise the economic equilibrium of the public service contract.	
--	--